

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

LAURIE THOMAS, et al.,

Plaintiffs,

v.

Lead Case:  
No. 1:21-CV-133<sup>1</sup>  
(DNH/CFH)

BEECH-NUT NUTRITION COMPANY,

Defendant.<sup>2</sup>

**APPEARANCES:**

**OF COUNSEL:**

Gustafson Gluek PLLC  
Canadian Pacific Plaza  
120 South Sixth Street, Ste. 2600  
Minneapolis, Minnesota 55402  
Attorneys for plaintiffs<sup>3</sup>

DANIEL E. GUSTAFSON, ESQ.

Taus, Cebluash Law Firm  
80 Maiden Lane, Ste. 1204  
New York, New York 10038  
Attorneys for plaintiffs

KEVIN LANDAU, ESQ.

Zigler Law Group, LLC  
308 S. Jefferson Street, Ste. 333  
Chicago, Illinois 60661  
Attorneys for plaintiffs

AARON M. ZIGLER, ESQ.

Wexler Boley & Elgersma LLP  
55 W. Monroe Street, Ste. 3300

KARA A. ELGERSMA, ESQ.

<sup>1</sup> Member cases: 1:21-CV-167 (DNH/CFH), 1:21-CV-183 (DNH/CFH), 1:21-CV-186 (DNH/CFH), 1:21-CV-200 (DNH/CFH), 1:21-CV-213 (DNH/CFH), 1:21-CV-229 (DNH/CFH), 1:21-CV-227 (DNH/CFH), 1:21-CV-258 (DNH/CFH), 1:21-CV-229 ((DNH/CFH), 1:21-CV-227 (DNH/CFH), 1:21-CV-258 (DNH/CFH), 1:21-CV-271, (DNH/CFH), 1:21-CV-285, (DNH/CFH), 1:21-CV-334 (DNH/CFH), 1:21-CV-511 ((DNH/CFH), 1:21-CV-483 (DNH/CFH), 1:21-CV-756 (DNH/CFH), 1:21-CV-789 (DNH/CFH), 1:21-CV-822 (DNH/CFH), 1:21-CV-283 (DNH/CFH), 1:21-CV-815 (DNH/CFH), 1:21-CV-722 (DNH/CFH), 1:21-CV-887

<sup>2</sup> Due to the sheer number of cases involved in this consolidated action, the Court lists only the caption for the lead case here.

<sup>3</sup> Given the significant number of plaintiffs and law firms who have appeared, the Court does not list the specific plaintiffs each firm represents in the caption.

Chicago, Illinois 60603  
Attorneys for plaintiffs

Scott & Scott, Attorneys at Law, LLP  
156 South Main Street  
P.O. Box 192  
Colchester, Connecticut 06515  
Attorneys for plaintiffs

ERIN GREEN COMITE, ESQ.

Silver Golub & Teitell LLP  
One Landmark Sq., 15<sup>th</sup> Floor  
Stamford, Connecticut 06901  
Attorneys for plaintiffs

STEVEN L. BLOCH, ESQ.  
IAN WISE SLOSS, ESQ.

Faruqi, Faruqi Law Firm  
685 Third Avenue, 26<sup>th</sup> Floor  
New York, New York 10017  
Attorneys for plaintiffs

INESSA MELAMED HUOT, ESQ.

Tycko & Zavareei LLP  
1828 L Street N.W., Ste. 1000  
Washington, DC 20036  
Attorneys for plaintiffs

JONATHAN K. TYCKO, ESQ.

Barrack, Rodos & Bacine  
330 Two Commerce Square  
2001 Market Street  
Philadelphia, Pennsylvania 19103  
Attorneys for plaintiffs

JEFFREY A. BARRACK, ESQ.

Calcaterra Pollack LLP  
1140 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, New York 10036-5803  
Attorneys for plaintiffs

MICHAEL LISKOW, ESQ.

George Gesten McDonald PLLC  
102 Half Moon Bay Drive  
Croton on Hudson, New York 10520  
Attorneys for plaintiffs

LORI G. FELDMAN, ESQ.

Pearson Simon & Warshaw, LLP  
800 LaSalle Ave., Ste 2150  
Minneapolis, Minnesota 55402  
Attorneys for plaintiffs

MELISSA S. WEINER, ESQ.

Kirwan Law Firm, PC

TERRY J. KIRWIN, JR., ESQ.

AXA Tower 1, 15th Floor  
100 Madison Street  
Syracuse, New York 13202  
Attorneys for plaintiffs

Lockridge Grindal Nauen PLLP  
100 Washington Ave. S., Ste. 2200  
Minneapolis, Minnesota 55401  
Attorneys for plaintiffs

KRISTA K. FREIER, ESQ.

Cuneo Gilbert & LaDuca, LLP  
4725 Wisconsin Avenue, NW, Ste. 200  
Washington, DC 20016  
Attorneys for plaintiffs

CHARLES J. LADUCA, ESQ.

The Sultz Law Group  
270 Madison Avenue, Ste. 1800  
New York, New York 10016  
Attorneys for plaintiffs

MINDY DOLGOFF, ESQ.

Levin, Fishbein Law Firm  
510 Walnut Street, Ste. 500  
Philadelphia, Pennsylvania  
Attorneys for plaintiffs

CHARLES E. SCHAFFER, ESQ.

Mason Lietz & Klinger LLP  
5101 Wisconsin Avenue, NW, Ste. 305  
Washington, DC 20016  
Attorneys for plaintiffs

GARY E. MASON, ESQ.

Goldenberg Schneider LPA  
4445 Lake Forest Drive, Ste. 490  
Cincinnati, Ohio 45242  
Attorneys for plaintiffs

JEFFREY S. GOLDENBERG, ESQ.

Milberg  
5335 Wisconsin Avenue NW, Ste. 440  
Washington, DC 20015  
Attorneys for plaintiffs

DAVID LEITZ, ESQ.

Edelson Lechtzin LLP  
3 Terry Drive, Ste. 205  
Newtown, Pennsylvania 18940  
Attorneys for plaintiffs

MARC EDELSON, ESQ.

Saltz, Mongeluzzi, Barrett & Bendesky, P.C.

PATRICK HOWARD, ESQ.

1650 Market Street, 52<sup>nd</sup> Floor  
Philadelphia, Pennsylvania 19103  
Attorneys for plaintiffs

Grabar Law Office  
One Liberty Place, Ste. 3600  
1650 Market Street  
Philadelphia, Pennsylvania 19103  
Attorneys for plaintiffs

JOSHUA H. GRABAR, ESQ.

Lynch Carpenter, LLP  
1133 Penn Avenue, 5<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15222  
Attorneys for plaintiffs

GARY F. LYNCH, ESQ.

Leeds Brown Law, P.C.  
One Old Country Road, Ste. 347  
Carle Place, New York 11514  
Attorneys for plaintiffs

JEFFREY K. BROWN, ESQ.

Anastopoulo Law Firm  
32 Ann Street  
Charleston, South Carolina 29403  
Attorneys for plaintiffs

ROY T. WILEY, IV, ESQ

Fegan Scott LLC  
150 S. Wacker Drive., Ste. 24<sup>th</sup> Floor  
Chicago, Illinois 60606  
Attorneys for plaintiffs

ELIZABETH FEGAN, ESQ.

The Wright Law Office, P.A.  
515 N. Flagler, Ste. P-300  
West Palm Beach, Florida 33401  
Attorneys for plaintiffs

WILL WRIGHT, ESQ.

O'Connell & Aronowitz, P.C.  
54 State Street, 9<sup>th</sup> Floor  
Albany, New York 12207  
Attorneys for plaintiffs

CHAD A. JEROME, ESQ.

Levi & Korinsky, LLP  
55 Broadway, 10<sup>th</sup> Floor  
New York, New York 10006  
Attorneys for plaintiffs

MARK S. REICH, ESQ.

Kohn, Swift & Graf, P.C.

DOUGLAS A. ABRAHAMS, ESQ.

1600 Market Street, Ste. 2500  
Philadelphia, Pennsylvania 19103  
Attorneys for plaintiffs

Roberts Law Firm US, PC  
20 Rahling Circle  
Little Rock, Arkansas 72223  
Attorneys for plaintiffs

MIKE ROBERTS, ESQ.

Pollock Cohen LLP  
60 Broad Street, 24<sup>th</sup> Floor  
New York, New York 10004  
Attorneys for plaintiffs

CHRISTOPHER LONG, ESQ.

E. Stewart Jones Hacker Murphy, LLP  
28 Second Street, Ste. 203  
Troy, New York 12180  
Attorneys for plaintiffs

JAMES E. HACKER, ESQ.

Gibbs Law Group  
505 14<sup>th</sup> Street, Ste. 1110  
Oakland, California 94612  
Attorneys for plaintiffs

MARK H. TROUTMAN, ESQ.

King & Spalding  
110 N. Wacker Drive  
Suite 3800  
Chicago, Illinois 60606  
Attorneys for defendant

LIVIA M. KISER, ESQ.

**CHRISTIAN F. HUMMEL**  
**UNITED STATES MAGISTRATE JUDGE**

### **MEMORANDUM-DECISION & ORDER**

The plaintiffs in these twenty-one consolidated<sup>4</sup> actions, each acting on behalf of a putative class, have asserted various claims against defendant Beech-Nut Nutrition Company, relating to the alleged failure to fully disclose, or intentional misrepresentation, of the presence of heavy metals, perchlorate, or other ingredients in

---

<sup>4</sup> On March 19, 2021, parties stipulated to consolidate the cases, with the action in 1:21-CV-133 being made the lead case. See Dkt. No. 55.

baby food products defendant marketed, advertised, and sold throughout the United States, including within the Northern District of New York. See generally Dkt. No. 1 (“Compl.”). Presently before the Court are five motions to have the Court appoint interim lead class counsel. See Dkt. Nos. 112, 113, 114, 115, 118.

Document Number 112, filed by the Andrews plaintiffs, proposes Gibbs Law Group and Labaton Sucharow as interim co-lead class counsel, E. Stewart Jones Hacker Murphy as interim liaison counsel, and Pollock Cohen as interim counsel. See Dkt. No. 112-5. The “Nationwide plaintiffs”<sup>5</sup> opposed the motion. See Dkt. Nos. 136-137. The Andrews plaintiffs submitted further support for their motion. See Dkt. No. 138, 143.

Document Number 113, filed by the Thomas plaintiffs, seek appointment of Catherine Sun-Yun Smith, of Gustafson Gluek PLLC, and Rebecca A. Peterson, of Lockridge Grindal Nauen, PLLP, as proposed interim co-lead counsel and for the appointment of an executive committee. See Dkt. No. 113-1. The Thomas movants submitted further papers in support of their motion. See Dkt. No. 136-137. The Nationwide plaintiffs opposed the motion. See Dkt. No. 137. On January 19, 2022, the Thomas plaintiffs filed a letter motion requesting permission to file supplemental authority in support of their motion. See Dkt. No. 151. The Nationwide plaintiffs (dkt. no. 159), Orsak plaintiffs (dkt. no. 161), the Andrews Team (dkt. no. 162), PRG Group (dkt. no. 164), and defendant (dkt. no. 163) responded to the Thomas plaintiffs’ letter motion.

---

<sup>5</sup> The Nationwide Plaintiffs group is Scott+Scott; Silver Golub & Teitell, LLP; Faruqi & Faruqi; Fegan Scott LLC; and Zigler Law Group, LLC. Dkt. No. 137 at 4 n.3.

Document Number 114, filed by the Orsak plaintiffs, seeks appointment of Levi & Korinsky, LLP and O'Connell and Aronowitz, P.C. as Interim Co-Lead Class Counsel. See Dkt. No. 114-4. The "Nationwide plaintiffs" opposed the motion. Dkt. No. 137. The Orsak plaintiffs submitted further support of their motion. See Dkt. No. 141.

Document Numbers 115-117, filed by the "Nationwide Plaintiffs," seek the appointment of Erin Green Comite, of Scott+Scott Attorneys at Law, LLP, and Steve L. Block, of Silver Golub & Teitell, LLP, as co-lead counsel, and for the appointment of a plaintiffs' steering committee consisting of attorneys from Faruqi & Faruqi, LLP; Fegan Scott, LLC; and Ziegler Law Group, LLC. See Dkt. No. 115-1.

Document Number 118, filed by the "PRG Group,"<sup>6</sup> seeks appointment of James R. Peluso of Dreyer Boyajian LLP, Michael R. Reese of Reese LLP, Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield LLP as Interim Co-Lead Counsel, and Jason P. Sultzer of Sultzer Law Group P.C., Charles E. Schaffer of Levin Sedran & Berman LLP, Roy T. Willey IV of Anastopoulo Law Firm, and Melissa Weiner of Pearson, Simon & Warshaw, LLP, as Interim Executive Committee Members. See Dkt. No. 118-1. The PRB group filed further support for its motion. See Dkt. No. 142.

On July 22, 2021, the Thomas plaintiffs, along with plaintiffs Laura Peek, Najah Henry, Chanel Jackson, Alexis Dias, Holly Buffinton, Constance Venable, Robyn Moore, Gabrielle Stuve, Lee Boyd, Teresa Wilson, Ryan Sanders, Susan Canada, Tabatha Sidi, Tiffanie Skibicki, Heather Age, Jolina Manley, Jessica David, and Cassandra Martell, moved for appointment of Catherine Sun-Yun Smith and Rebecca A. Peterson and interim lead counsel and "for the appointment of an executive committee of this

---

<sup>6</sup> The Douglas movants refer to their proposed lead interim counsel as the PRB Group. See Dkt. No. 118-1 at 4 n.1.

consolidated class action . . . as well as any later filed actions subsequently consolidated with the Consolidated Action, pursuant to [Fed. R. Civ. P.] 23(g).” Dkt. No. 113-1 at 5.

### **I. Background**

On February 25, 2021, plaintiffs Laurie Thomas, Alison Kavulak, Jen MacLeod, Mary Narvaez, Alison Fleissner, Emily Bigaouette, Laura Eggatz, Teresa Hagmaier, and Nicole Fallon (“Thomas plaintiffs”), by their attorneys Gustafson Gluek PLLC and Taus, Cebulash & Landau, LLP, filed the first lawsuit in this district on behalf of themselves and all others similarly situated. See Dkt. No. 1 (“Compl.”).<sup>7</sup> The Thomas plaintiffs seek injunctive and monetary relief on behalf of the proposed class and subclasses, including “(i) requiring full disclosure of all such substances and ingredients in Defendant’s marketing, advertising, and labeling; (ii) requiring testing of all ingredients and final products for such substances; and (iii) restoring monies to the members of the proposed Class.” Compl. at 1-2. Plaintiffs premise jurisdiction over the action upon the Class Action Fairness Act (“CAFA”) 29 U.S.C. § 1332(d)(2). See Compl. at 4.

On February 11, 2021, plaintiff Laura Peek commenced an action on behalf of herself and others similarly situated against defendant through her counsel Cuneo, Gilbert & LaDuca, LLP, and Lockridge Grindal Nauen, PLLP. See 1:21-CV-167, Dkt. No. 1. On February 16, 2021, plaintiffs Robyn Moore and Gabrielle Stuve commenced an action on behalf of themselves and others similarly situated by their counsel

---

<sup>7</sup> Unless otherwise noted, within this Memorandum-Decision & Order, citations to page numbers are to the pagination generated by the Court’s electronic filing system, CM/ECF, located at the header of each page, and not to the pagination of the individual documents.



Cacaterra Pollack and George Gesten McDonald PLLC. See 1:21-CV-183, Dkt. No. 1.

On February 18, 2021, plaintiff Mattia Doyle commenced an action on behalf of himself

and others similarly situated by his counsel Tycko & Zavareei, LLP. See 1:21-CV-186,

Dkt. No. 1. On February 22, 2021, plaintiff Lee Boyd commenced an action on behalf of

themselves and others similarly situated by their counsel Kirwan Law Firm, PC. See

1:21-CV-200, Dkt. No. 1. On February 24, 2021, plaintiffs Jeremy Cantor, Ashley Allen,

Dominick Grossi, Anthony Harrison, Heather Hyden, Haley Sams, Vito Scarola, Emily

Baccari, Neisha Daniels, Heather McCormick, Jillian Geffken, Christina Holland,

Hannah Grandt, and Amber Caudill commenced an action on behalf of themselves and

others similarly situated by their counsel Scott & Scott, LLP, Faruqi, Faruqi Law Firm;

Beger & Montague, P.C.; and Silver Golyb & Teitell LLP. See 1:21-CV-213, Dkt. No. 1.

On February 26, 2021, plaintiff Kathey Henry commenced an action on behalf of herself

and others similarly situated by her counsel Mason Lietz & Klinger LLP, Fishbein Law

Firm, and Goldenberg Schneider LPA. See 1:21-CV-227, Dkt. No. 1. Also on February

26, 2021, plaintiff Michael Motherway commenced an action on behalf of himself and

others similarly situated by his counsel Dreyer Boyajian LLP, The Sultzer Law Group,

and Reese LLP. See 1:21-CV-229, Dkt. No. 1.

On March 4, 2021, plaintiff Kelsey Gancarz commenced an action on behalf of herself and others similarly situated by her counsel Sheehan & Associates, P.C. See

1:21-CV-258, Dkt. No. 1. On March 9, 2021, plaintiff Atahsia Smiley commenced an

action on behalf of themselves and others similarly situated by their counsel Kantrowitz,

Goldhammer & Graifman, P.C. See 1:21-CV-271, Dkt. No. 1. On March 11, 2021,

plaintiffs Najah Henry, Chanel Jackson, Alexis Dias, Holly Buffinton, and Constance

Venable commenced an action on behalf of themselves and others similarly situated by their counsel Garbar Law Office, Taus, Cebulas Law Firm, Gustafson Gluek PLLC, Wexler Boley & Elgersma LLP, Edelson Lechtzin LLP, and Saltz, Mongeluzzi, Barrett & Bendesky, P.C. See 1:21-CV-285, Dkt. No. 1. On March 24, 2021, plaintiffs Teresa Wilson, Ryan Sanders, Susan Canada, Tabatha Sidi, Tiffanie Skibicki, Heather Age, Jolina Manley, Jessica David, and Cassandra Martell commenced an action on behalf of themselves and others similarly situated through their counsel Leeds Brown Law, P.C. and Lynch Carpenter, LLP. See 1:21-CV-334, Dkt. No. 1. On May 4, 2021, plaintiff Mieshia Douglas commenced an action on behalf of herself and others similarly situated by her counsel Anastopoulo Law Firm. See 1:21-CV-511, Dkt. No. 1. On March 3, 2021,<sup>8</sup> plaintiff commenced an action on behalf of herself and others similarly situated by counsel Scott & Scott, LLP and The Wright Law Office, P.A. See 1:21-CV-483, Dkt. No. 1. On March 11, 2021, plaintiff Ana Lynette Gregory Eldridge commenced an action on behalf of herself and others similarly situated by counsel Fegan Scott LLC. See 1:21-CV-283, Dkt. No. 1. On July 1, 2021, plaintiff Marie Mezile commenced an action on behalf of herself and others similarly situated by her counsel Dreyer Boyajian LLP. 1:21-CV-756, Dkt. No. 1. On July 10, 2021, plaintiffs Alyssa Rose Myjorie Philippe, Melissa Sisk, and Vanessa Inoa commenced an action on behalf of themselves and others similarly situated by counsel E. Stewart Jones Hacker Murphy, LLP. See 1:21-CV-789, Dkt. No. 1. On July 16, 2021, plaintiff Asyia Andrews commenced an action on behalf of herself and others similarly situated by counsel E. Stewart Jones Hacker Murphy, LLP. See 1:21-CV-815, Dkt. No. 1. On July 19, 2021,

---

<sup>8</sup> This action was commenced in the Middle District of Florida and was transferred to this district by stipulation on April 15, 2021. 1:21-CV-483, Dkt. No. 18.

plaintiffs Rebecca Abbott and 142 other plaintiffs commenced an action on behalf of themselves and other similarly situated by counsel Scott & Scott, LLP. See 1:21-CV-822, Dkt. No. 1. On August 6, 2021, plaintiff Carrie Ashbourne and twenty four other plaintiffs commenced an action on behalf of themselves and others similarly situated by counsel Dann Law Firm and Zimmerman Law Offices, P.C. See 1:21-CV-887, Dkt. No. 1. On March 16, 2021, parties<sup>9</sup> filed a stipulation to consolidate. See Dkt. Nos. 54, 55.

## II. Legal Standard

Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 23(g)(3) provides, “[t]he court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” “Because representation of a putative class prior to the filing of a motion for class certification is sometimes necessary, Rule 23(g)(3) permits a court to appoint interim class counsel.” Anderson v. Fiserv, Inc., 09 CIV. 8397 (BSJFM), 2010 WL 571812 at \*2 (S.D.N.Y. Jan. 29, 2010). Rule 23(g)(4) provides that “[c]lass counsel must fairly and adequately represent the interests of the class.” FED. R. CIV. P. 23(g)(4). Specifically, the Court “must” consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

FED. R. CIV. P. 23(g)(1)(A). The Court “may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” FED. R.

---

<sup>9</sup> Defendant and the plaintiffs involved in the following cases stipulated to consolidation of the actions: 1:21-CV-133, 1:21-CV-167, 1:21-CV-183, 1:21-CV-186, 1:21-CV-200, 1:21-CV-213, and 1:21-CV-229.

Civ. P. 23(g)(2); see also id. § 23(g)(3) (“The Court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.”). As this Court has clearly set forth,

When considering the appointment of interim class counsel, this Court considers the same factors that a court appointing lead counsel for a certified class must consider, including the candidates’ qualifications and competence, their ability to fairly represent diverse interests, and their ability ‘to command the respect of their colleagues and work cooperatively with opposing counsel and the court. Manual for Complex Litigation § 10.224 (4<sup>th</sup> ed. 2004); FED. R. CIV. P. 23(g)(1)(A). The Court should also examine anything else that is ‘pertinent to counsel’s ability to fairly and adequately represent the interests of the class,’ FED. R. CIV. P. 23(g)(1)(B), including “(1) the quality of the pleadings; (2) the vigorousness of the prosecution of the lawsuits; and (3) the capabilities of counsel.” In re Comverse Tech, Inc. Derivative Litig., 2006 WL 3762986, at \*2-3 (E.D.N.Y. Sept. 22, 2006). Ultimately, the court’s task in deciding these motions is “to protect the interests of the plaintiffs, not their lawyers.” In re Parking Heaters Mem. Antitrust Litig., 310 F.R.D. 54, 57 (E.D.N.Y. Feb. 24, 2006)).

Baker v. Saint-Gobain Performance Plastics Corp., 1:16-CV-0220 (LEK/DJS), 1:16-CV-0292 (LEK/DJS), 1:16-CV-0394 (LEK/DJS), 1:16-CV-0476 (LEK/DJS), 2016 WL 4028974, at \*4 (N.D.N.Y. July 27, 2016). “The Court must appoint the ‘applicant best able to represent the interests of the class.’” Fero v. Excellus Health Plan, Inc., No. 6:15-CV-6569 EAW, 2016 WL 297742, at \*2 (W.D.N.Y. Jan. 25, 2016) (quoting In re Bank of Am. Corp. Sec., Derivative & ERISA Litig., 258 F.R.D. 260, 272 (S.D.N.Y. 2009) and Fed. R. Civ. P. 23(g)(2) (additional internal quotation marks omitted)); In re Am. Exp. Anti-Steering Rules Antitrust Litig., No. 11-MD-2221 (NGG/RER), 2015 WL 4645240, at \*12 (E.D.N.Y. Aug. 4, 2015) (“Because class counsel seeks to determine the rights of absent putative class members, ‘a court must carefully scrutinize the adequacy of representation’ when considering whether to certify a class.”) (quoting

Kingsepp v. Wesleyan Univ., 142 F.R.D. 597, 599 (S.D.N.Y. 1992) (additional citation omitted)).

#### IV. Discussion

After carefully reviewing the competing motions, the Court is confident that the attorneys and law firms involved are all highly qualified, experienced, professional, and well-regarded in their fields. Although some firms have brought their suits earlier than others, all of the applicants have demonstrated that they have undergone significant efforts to identify and investigate the claims in these cases, and all have members who are experienced with complex litigation and class actions. See generally In re SSA Bonds Antitrust Litig., 16 Civ. 3711 (ER), 2016 WL 7439365, at \*2 (S.D.N.Y. Dec. 22, 2016). Selection of any of these options would result in a team that would zealously advocate for the potential class of plaintiffs. Indeed, “the Court is faced with a series of good alternatives.” Baker, 2016 WL 4028974, at \*4. Ultimately, however, the Court must choose interim class counsel best able to represent the interests of the potential class.

After careful deliberation, the Court grants in part the motion of the “Nationwide plaintiffs,” insofar as the Court appoints Erin Green Comite of Scott+ Scott, and Steven L. Bloch of Silver Golub & Teitell LLP as co-lead interim counsel. At over 140 plaintiffs, the Nationwide plaintiffs have, by far, the largest number of plaintiffs of any of the movants.<sup>10</sup> Although not determinative, the choice of counsel of the majority of plaintiffs

---

<sup>10</sup> Although the Thomas plaintiffs were the first-filed complaint in this Court (along with the second, third, and fifth filed), the Court does not find this dispositive nor sufficiently compelling to outweigh the merits of the Nationwide plaintiffs’ proposal. See Dkt. Nos. 113-1, 115.

is entitled to weight. See Deangelis v. Corzine, 286 F.R.D. 220, 225 (S.D.N.Y. 2012) (citing In re Rail Freight Fuel Surcharge Antitrust Litig., MDL No. 1869, 2008 WL 1883447, at \*2 (D.D.C. Apr. 28, 2008) (In observing that a large number of plaintiffs agreed to the proposed interim counsel structure and adopting that proposal, the Court noted that it that “gives some weight to plaintiffs’ ‘self selection’ of class counsel”).

The Nationwide plaintiffs’ proposed co-lead interim counsel are attorneys experienced with complex litigation and class litigation who have had demonstrated success through many large settlements for their clients. See Dkt. No. 116 at 11-12. Of significance is that much of this litigation involves actions relating to food or product mislabeling or advertising. See id. at 9-14. Further, the Court finds that the co-lead interim counsel has demonstrated that they have already taken significant efforts in proceeding with this litigation by engaging in significant investigative work, including commissioning independent laboratory testing and engaging in significant research. See Dkt. No. 116 at 8.

Also weighing heavily in the Court’s determination is the quality of the papers submitted. The Nationwide plaintiffs’ motion, which Ms. Comite drafted, is well-researched and thorough, suggesting to the Court that similar, high-quality briefing will follow. See generally Dkt. No. 116. The Court notes that co-lead counsel’s demonstrated professionalism in prior cases, which judges have acknowledged, also weighs heavily in the Court’s choice. See id. at 10. The Court believes that counsel will similarly demonstrate the highest level of professionalism in this action.

The Court is also convinced that the proposed co-lead interim counsel has set forth a well-organized plan for handling the great responsibilities of this litigation, one

that will work even with the Court's changes to their proposed leadership structure, discussed below. See Dkt. No. 115-1 at 2-3. Finally, the Court is confident, based on the presentation made, that the proposed co-lead interim counsel for the Nationwide plaintiffs has the financial resources necessary to litigate this action, as well as the benefit and additional resource of the experienced attorneys in their many offices. See Dkt. No. 116 at 11-13,19.

The Court, however, denies the Nationwide plaintiffs' application insofar as they seek appointment of a plaintiffs' steering committee. See generally Dkt. No. 1116. "Committees of counsel often 'compet[e against] considerations of efficiency and economy,' however, and 'can lead to substantially increased costs and unnecessary duplication of efforts.'" In re Warner Music Grp. Data Breach, No. 20 CIV. 7473 (PGG), 2021 WL 725728, at \*3 (S.D.N.Y. Feb. 22, 2021) (quoting In re Crude Oil Commodity Futures Litig., No. 11 CIV. 3600 WHP, 2012 WL 569195, at \*2 (S.D.N.Y. Feb. 14, 2012)). "Committees are most commonly needed when group members' interests and positions are sufficiently dissimilar to justify giving them representation in decision making." Id. (quoting In re Crude Oil Commodity Futures Litig., 2012 WL 569195, at \*2). Here, there the Nationwide plaintiffs do not contend that group members' interests or positions are dissimilar or otherwise conflicting. Although the attorneys proposed for the steering committee are no doubt skilled, hoping to avoid a "too many cooks in the kitchen" scenario, the Court finds such a committee unnecessary at this time. However, the Court is confident that the members of selected leadership structure will work with all of the attorneys involved in this consolidated action in order to benefit from their experience and wisdom.

Missing from the Nationwide plaintiffs' application is the inclusion of local counsel, something the Court finds of great significance in consideration an arrangement of lead counsel that would best meet the needs of the potential class. See Fero, 2016 WL 297742, at \*3 (W.D.N.Y. Jan. 25, 2016) (choosing a proposal with "significant involvement from a local law firm, which the Court believes is important to effectively represent the class."). Given that defendant's headquarters appears located within Montgomery County, New York, having counsel within a reasonable distance and within this District will serve this litigation well and allow it to proceed most efficiently throughout the discovery process and beyond. Therefore, the Court appoints E. Stewart Jones Hacker Murphy, LLP as interim liaison counsel. Although E. Stewart Jones Hacker Murphy, LLP is not a part of the Nationwide plaintiffs' proposal, the Court finds such an alteration necessary due to the importance of involving local counsel in the leadership structure. E. Stewart Jones Hacker Murphy, LLP, has demonstrated its experience in handling complex cases and its attorneys have a high and unblemished reputation in their practice before this Court and in the region. See In re Am. Exp. Anti-Steering Rules Antitrust Litig., No. 11-MD-2221 NGG RER, 2015 WL 4645240, at \*12 (E.D.N.Y. Aug. 4, 2015) (quoting Friedman-Katz v. Lindt & Sprungli (USA), Inc., 270 F.R.D. 150, 160 (S.D.N.Y. 2010) (additional citation omitted)) ("In determining whether proposed class counsel is adequate, 'the Court may consider the honesty and integrity of the putative class counsels, as they will stand in a fiduciary relationship with the class.'"). The Court believes the attorneys of E. Stewart Jones Hacker Murphy, LLP will work cooperatively with the co-lead interim counsel and all other attorneys involved.



Accordingly, E. Stewart Jones Hacker Murphy, LLP is appointed as interim liaison counsel.

## V. Conclusion

**WHEREFORE**, for the reasons set forth herein, it is hereby

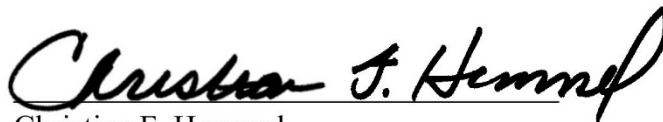
**ORDERED**, that the Nationwide plaintiffs' "Motion for Appointment of Co-Lead Counsel and for Appointment of a Plaintiffs' Steering Committee Pursuant to Fed. R. Civ. [P] 23(g)", Dkt. No. 115, is **GRANTED IN PART**, insofar as the Court appoints Erin Green Comite of Scott + Scott, and Steven L. Block of Silver Golub & Teitell LLP, as Co-Lead Interim Counsel, and the motion is **otherwise DENIED**; and it is further

**ORDERED**, that the Andrews plaintiffs' Motion to Appoint Lead Counsel, Dkt. No. 112, is **GRANTED IN PART** to the limited extent that E. Stewart Jones Hacker Murphy, LLP, is appointed as Interim Liaison Counsel, and the motion is **otherwise DENIED**; and it is further

**ORDERED**, that the Thomas plaintiffs' Letter motion seeking permission to submit supplemental authority, Dkt. No. 151, is **GRANTED** insofar as the Court has considered the submission in making its determination; and it is further

**ORDERED**, that the motions filed by the Thomas Plaintiffs, Dkt. No. 113; Orsak Plaintiffs, dkt. no. 114, and PRB Group, dkt. no. 118 are **DENIED**.

Dated: March 21, 2022  
Albany, New York

  
Christian F. Hummel  
U.S. Magistrate Judge